

EXHIBIT D
RESTRICTIVE COVENANT

EQUILON

2555 13th Avenue SW, Seattle, Washington

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(l)(f) and (g) and WAC 173-340-440 by the Equilon Enterprises LLC and Texaco Refining and Marketing Inc., [EQUILON] its successors and assigns.

Remedial action (hereafter "Remedial Action") is to be conducted on the Property that is the subject of this Restrictive Covenant. The Remedial Action is described in the Final Cleanup Action Plan, CAP, Equilon Seattle Sales Terminal. This document is an exhibit to the Consent Decree entered in State of Washington, Department of Ecology vs. Equilon Enterprises LLC, King County Case No.

This Restrictive Covenant is required because residual concentrations of lead and arsenic may remain beneath a capped impermeable material, or excavated. If excavated, this restrictive covenant will be amended at a later date, and because residual concentrations of dissolved total petroleum hydrocarbons and its constituents (e.g. benzene), that exceed the Surface Water Quality and other cleanup standards for groundwater established under WAC 173-340-720 may remain after Remedial Action is completed, and because total petroleum hydrocarbon impacted soils are left in the subsurface at the Property.

The undersigned, EQUILON, is the fee owner of real property (hereafter "Property") in the County of King, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and made a part hereof by reference.

EQUILON, makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1.

a. The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(23) and defined in and allowed under the City of Seattle's zoning regulations codified in the City of Seattle as of the date of this Restrictive Covenant.

b. No groundwater may be taken for any use from the Property that is inconsistent with the Remedial Action implementation.

Section 2.

a. As of the date the Consent Decree was entered, a portion of the Property contains total petroleum hydrocarbons in the soil, dissolved total petroleum hydrocarbons in the groundwater, some floating product on the water table, lead and arsenic on the surface soils.

b. Specifically, elevated soil concentrations of residual petroleum hydrocarbons and dissolved residual of petroleum hydrocarbons and its constituents are present on the east site of the warehouse (former UST location) by the main terminal and near tank 31538, and tank 31470; and beneath the Shoreline Manifold Area next to Elliott Bay. Also, elevated concentrations of lead and arsenic above Harbor Island surface soil action levels of 1000 mg/kg and 32.6 mg/kg respectively are present in portions of the tank farm of the main terminal area. These locations are shown in the enclosed map (Attachment B). The Owner shall not alter, modify, or remove the existing structure(s) in any manner that may result in the release or exposure to the environment of the contaminated soils, groundwater, vapors or create a new exposure pathway without prior written approval from Ecology, which approval will not be unreasonably withheld.

c. Any activity on the property that may result in the release or exposure to the environment of the contaminated soils, vapors and contaminated groundwater in a manner that is inconsistent with the Remedial Action implementation, or create a new pathway that endangers the public health and the environment, is prohibited without written approval from Ecology, which approval shall not be unreasonably withheld. Site workers conducting construction activities within these areas will follow the Health and Safety Plans to be developed under WAC 173-340-810. Also they will be instructed on precautionary actions to avoid direct contact with contaminated soils, vapors and groundwater to ensure protection of site workers.

Section 3. The Owner of the Property must give thirty (30) day advance written notice to Ecology prior to transfer of any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment. Approval by Ecology pursuant to Section 5 shall not be unreasonably withheld.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect Remedial Actions conducted at the Property, and to inspect records that are related to the Remedial Action. Ecology will provide EQUILON advanced notice of its entry

onto the Site when feasible. Ecology shall adhere to Access and Operating Procedures attached as Exhibit C, and applicable Health and Safety Plans to be developed.

Section 7. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs, which concurrence shall not be unreasonably withheld.

DATED: _____

Equilon Enterprises LLC

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of October, 1998, before me personally appeared _____, to me known to be the _____ of _____, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that was authorized to execute the said instrument, and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Please print name legibly)

NOTARY PUBLIC in and for the State of
Washington, residing at

_____.
My commission expires: _____.